December 4, 2012

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication in MB Docket No. 09-182

Dear Ms. Dortch:

On November 30, 2012, Jane E. Mago, Jerianne Timmerman and the undersigned of the National Association of Broadcasters (NAB), met with Bill Lake, Hillary DeNigro, Brendan Holland, and Benjamin Arden of the Media Bureau.

We reiterated NAB's support for modification of the broadcast ownership rules to reflect dramatic changes to the marketplace in which broadcasters compete for audiences and advertisers. Specifically, the record provides strong support for elimination of both the newspaper-broadcast and radio-television cross-ownership rules; for relaxation of the local television and local radio rules; and for the adoption of various proposals to promote diversity in broadcasting.

We observed that while press reports suggest that a draft order would reform certain ownership rules, reports also indicate that the Commission may modify its rules so that joint sales agreements (JSAs) among television stations in the same market would be treated as attributable interests. NAB is concerned that such a change in the attribution rules is not supported by the record, will be harmful to television stations and their viewers, especially in smaller markets, and will undermine the Commission's longstanding goals of competition, diversity and localism. Set forth below is a summary of the issues we raised regarding television JSA attribution and the need to adopt proposals that will enhance diversity of broadcast ownership.

TV JSA Attribution

The fact that the Commission treats certain radio JSAs as attributable is not a sufficient reason to reflexively mandate similar treatment of television JSAs. NAB representatives stated that there is no evidence in the record in this proceeding (or

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other proceedings) that the radio and television markets warrant identical treatment.[1] In fact, competitive developments in local television markets demonstrate that attribution of TV JSAs is not needed to safeguard competition in the video marketplace. For example:

- As shown in NAB's comments in this proceeding, television stations fiercely compete with other video providers for audience share and advertising dollars, both local and national. While this was true when the FCC sought comment on attribution of JSAs in 2004, competition from pay TV has only increased during the past eight years.

- By 2009, cable and Internet advertising accounted for approximately one-third of the local advertising dollars on which broadcasters traditionally have depended, and these shares are expected to grow.[2]

- Between 2000 and 2010, cable made significant gains in its share of local TV market advertising. In the Top 10 Nielsen markets, cable's share of local television advertising more than doubled during this period (from approximately 11.3 percent of TV market ad revenues in 2000 to 24.5 percent in 2010).[3] Stations in smaller markets face similar competition from cable advertising.[4]

- Other media also are impacting broadcasters' revenues as advertisers allocate more of their budgets to locally targeted digital, mobile, and social media advertisements.[5]

[1] Comments filed in response to the 2004 rulemaking notice regarding TV JSAs overwhelmingly opposed attribution of TV JSAs.

[2] *See* NAB Comments in MB Docket No. 09-182 at 14 (filed Mar. 5, 2012) (citing Jeffrey A. Eisenach & Kevin W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting (2011) ("Economies of Scale Report"), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("Eisenach 2011 Reply Declaration") in NAB Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011), at 22 fig. 7).

[3] *See* NAB Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at Attachment C.

[4] *Id.* In markets ranked 11 through 25, cable's average share of the local television ad pie rose from 11.4 percent in 2000 to 22.7 percent in 2010. Cable's average market share also nearly doubled in markets 26 through 50, and cable's market share doubled in both markets 51 through 100 and markets 101 through 150.

[5] For example, it has been estimated that (i) by 2015, locally targeted mobile advertisements will account for nearly 70 percent of overall mobile advertising budgets; (ii) by 2015, small business will allocate only 30 percent of their advertising budgets to traditional media, such as broadcast television, focusing instead on new media alternatives; and (iii) over the next five years, local social media advertising revenues will grow at an annual compound rate of 33 percent. *See* NAB Comments in MB Docket No. 09-182 at 14-15 (filed Mar. 5, 2012) (citing BIA/Kelsey releases).

We observed that pay TV's rising share of local advertising markets is fueled in part by joint advertising sales arrangements that allow multichannel video programming distributors (MVPDs) to compete against broadcasters, but not each other, for advertising market share.[6] It would be both anticompetitive and fundamentally unfair to prevent local broadcast stations, but not their direct competitors, to sell advertising time jointly.

We discussed the impact of cable clustering, observing that in many markets, broadcasters are competing with highly concentrated MVPDs. We stated that in over 100 DMAs, there is a single cable operator serving 40 percent or more of all MVPD subscribers. In approximately one-third of all DMAs, one operator controls access to 50 percent or more of all MVPD subscribers.[7] There is even a market where a single cable operator dominates the market with a 91 percent share.[8] If the TV JSA restriction is adopted, a joint venture among MVPDs (or a single MVPD) could control a share of a local advertising market that far surpasses that of one or more television broadcast stations, but joint sales by two television stations would be impermissible. Although this would not be a rational result, there are no restrictions on the ability of pay TV providers to achieve dominance through a strategy of regional clustering or through joint advertising sales ventures.

Even more significantly, the Commission should consider the importance of JSAs to stations' ability to offer high-quality service to their viewers. Joint sales agreements are often critical to a broadcaster's ability to improve the quality and quantity of available programming and to remain financially viable in the face of rising competition. As discussed in our comments, operational efficiencies afforded by JSAs and other arrangements have allowed broadcasters to maintain and even expand local news on many stations, even during a period of declining advertising revenue.[9]

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[6] For example NCC Media, which is jointly owned by three large cable operators, partners with its head-to-head competitors in local markets, such as Verizon FiOS, AT&T U-Verse, and DIRECTV, to sell local ad spots. *See* NAB Comments in MB Docket No. 09-182 at 14 (filed Mar. 5, 2012) (citing Wayne Friedman, NCC's "I+" Extends Cable Ad Reach, Media Daily News, Mar. 7, 2011).

[7] *2012 SNL Kagan Media Census, Estimates.*

[8] *Id.*

[9] *See* NAB Comments in MB Docket No. 09-182 at 16 (filed Mar. 5, 2012) (from 2000-2009, local TV stations' advertising revenues decreased by 37 percent, or $9.5 billion). *See also* Pew Project for Excellence in Journalism, *The State of the News Media 2012: An Annual Report on American Journalism* (2012), available at http://stateofthemedia.org/2012/local-tv-audience-rise-after-years-of-decline/local-tv-by-the-numbers/ (the estimated on-air advertising revenue of local television stations declined by 10 percent from 2007 to 2011).

JSAs are important to local station operations because television broadcasting generally, and local news production specifically, are subject to strong economies of scale and scope.[10] Placing limitations on broadcasters' ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms."[11] As demonstrated in economic analyses filed previously, such arrangements "allow broadcasters, especially in small markets, to reduce their fixed costs – i.e., to realize economies of scale and scope – and thus continue to operate where it would otherwise be uneconomic to do so."[12] Thus, "depriving stations, especially smaller ones, of the ability to engage in [sharing agreements] could have a significant impact on both the production of local news and on the stations' ultimate financial viability."[13]

We noted that comments filed in this proceeding have demonstrated that JSAs and other sharing arrangements facilitate the production of local news and enable broadcasters to better serve their local communities while achieving economic efficiencies. The following are illustrative examples:

- A JSA and shared services agreement (SSA) between stations owned by Schurz Communications, Inc. and Entravision Holdings, LLC resulted in the launch of Spanish-language news on a station in Derby, KS, making it the first and only Spanish-language local television news operation in the state;[14]
- After entering into a JSA/SSA with Schurz Communications, Inc. in the Springfield, MO DMA, Station KSPR went from having only a low power digital antenna to a state-of-the-art studio with maximized DTV transmission facilities. Prior to the sharing arrangement, most of the station's news programming received no measurable ratings. The sharing arrangement enabled the station to produce unique local news programming in HD using its own separate news director and staff.
- As a result of a JSA/SSA in the Burlington, VT-Plattsburgh, NY DMA, Station WFFF-TV began its first ever news operation, and Station WVNY(TV) was able to

[10] Economies of Scale Report at 1.

[11] *Id.* at 2.

[12] Eisenach 2011 Reply Declaration at ¶ 26.

[13] *Id.* NAB has demonstrated the more severe economic struggles of small market TV stations in its comments and studies. *See* NAB Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 16-18, 23 and Attachment D, "2010 Television Market Revenues;" NAB Reply Comments in MB Docket No. 09-182 (filed Apr. 13, 2012) at 10-12 and Attachment A, "Reforming Local Ownership Rules: Station and Market Analyses" at 10-12 (2012) (showing that revenues in smaller television markets are substantially lower than in larger markets, both in absolute terms and when analyzed as revenues per household).

[14] Entravision Holdings, LLC Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 13.

re-establish a closed news operation. The launch of news on these stations created 28 new local jobs.[15]

- A JSA/SSA involving Stations WGMB(TV) and WVLA(TV) in the Baton Rouge, LA DMA resulted in both stations airing news for the first time, as well as a new local high school sports round-up show.[16]
- Grant Group, Inc. observed that its nightly newscast was made possible by a sharing arrangement with another station and reported on plans for a morning newscast;[17]
- LIN stated that it is able to offer news in Providence, RI and Austin, TX and other local programming in Dayton, OH because of sharing arrangements (including a JSA);[18]
- A JSA/SSA involving Stations KTSM-TV and KDBC-TV in the El Paso, TX market preserved KDBC-TV's local news operation and permitted the upgrade of its technical facilities, enabling it to offer news and other non-network content in HD.[19]
- In Youngstown, OH, the owner of Station WYTV(TV) was considering cancelling all local news or going dark. A JSA/SSA with another station in the market enabled the station to remain on air, offering 3.5 hours of local news per weekday.[20]
- A Fort Wayne, Indiana JSA/SSA involving Stations WISE-TV and WPTA(TV) has enabled the station to "invest in bringing new programming to local residents that previously was only available to certain cable and satellite subscribers" including the CW network and MyNetwork programming. The stations also aired more hours of local news per week than before entering their sharing agreements.[21]
- Prior to entering an SSA/JSA with Station WEEK-TV, the licensee of Station WHOI-TV projected that the station would continue operating at a loss and was considering major cutbacks in staffing and news. Instead, the station expanded its news staff and both stations were able to "cover more stories and provide more in depth coverage of local political races than ever before."[22]

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[15] *See* Reply Comments of the Coalition to Preserve Local TV Broadcasting to *Notice of Inquiry* in MB Docket No. 09-182 (filed Jul. 26, 2012) at 12-13.

[16] *Id.* at 13.

[17] Grant Group, Inc. Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 14-15.

[18] LIN Television Corporation Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 9-13.

[19] *See* Reply Comments of the Coalition to Preserve Local TV Broadcasting to *Notice of Inquiry* in MB Docket No. 09-182 (filed Jul. 26, 2012) at 14.

[20] *Id.* at 14-15.

[21] *Id.* at 15.

[22] *Id.* at 16.

- Belo Corp. observed that an SSA with Raycom Media in the Tucson, AZ market allowed a station to add a new two-hour news broadcast;[23]
- Cox Media Group stations in Atlanta, GA and Palm Beach, FL are parties to local news sharing arrangements that have increased local news dissemination in those markets;[24]
- Sharing arrangements allowed several Nexstar Broadcasting, Inc. stations to generate more local programming, including local news.[25]

Commenters also noted additional public interest benefits that have been achieved through the use of sharing arrangements, including improvements in emergency coverage and the purchase of better equipment to disseminate emergency information[26] and facilitation of full-service HD deployment where necessary investment would not otherwise have been economically feasible.[27] This evidence substantiates other empirical data previously submitted to demonstrate that sharing arrangements facilitate the production of local news, and that without such arrangements many stations (particularly in small or mid-sized markets) could not achieve the operational efficiencies necessary to finance their own news production.[28]

Diversity

NAB representatives also discussed proposals on the record for creating a more competitive and diverse broadcast industry. We reiterated that overly restrictive ownership limits that reduce economic incentives to invest in broadcasting affect the ability of all existing and aspiring broadcasters to raise capital, but the impact is felt even more strongly by new entrants and small businesses, including women and

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[23] Belo Corp. Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 16.

[24] Cox Media Group Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 18.

[25] Nexstar Broadcasting, Inc. Comments in MB Docket. No. 09-182 (filed Mar. 5, 2012) at 29-31. *See also* Comments of Coalition to Preserve Local TV Broadcasting in MB Docket No. 09-182 (filed Mar. 5, 2012) at 12-13 (providing additional examples of arrangements that resulted in increased local news).

[26] *See* New Vision Television, LLC and TTBG, LLC Joint Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 10.

[27] *See id.* at 11. *See also* Jonathan Make, *Widespread, Cost-Saving TV JSAs Lead Executives to Question Why FCC Would Attribute Them*, COMMUNICATIONS DAILY, November 29, 2012 (station executives interviewed "said JSAs have been successful in cutting back-office costs and keeping on-air some stations that otherwise might have trimmed programming or gone dark because they were struggling for ad revenue").

[28] *See, e.g.*, Coalition to Preserve Local TV Broadcasting Reply Comments to *Notice of Inquiry* in MB Docket No. 09-182 (filed July 26, 2010) at 7-10; Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, "Effect of Common Ownership or Operation on Television News Carriage: An Update" Attachment A, NAB Reply Comments in MB Docket No. 06-121, at 6-7 (Nov. 1, 2007).

minorities. We stated that revisions to the rules that allow for more efficient and competitively viable broadcast operations will help attract capital to the broadcast industry, to the benefit of both incumbents and newer entrants. We also observed that the Commission should be skeptical of unproven assumptions about the relationship between relaxation of ownership limits and a reduction in the number of minority-owned broadcast stations. NAB has refuted such claims in previous proceedings,[29] and has cited evidence of *increases* in the number of stations owned by minorities and women following earlier reforms of the local broadcast ownership restrictions.[30] We also discussed NAB's support for several proposals designed to promote new entry into the broadcast industry. Specifically, NAB has urged the FCC to:

- Sponsor primers on investment and financing of broadcast enterprises for smaller and regional lenders so that they may be better informed about the industry and more willing to make loans to new owners.
- Adopt an incubator or waiver program that would give broadcasters incentives to finance qualifying businesses and to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve.
- Adopt subchannel licensing programs that would permit the sale of broadcast subchannels to qualifying entities to facilitate better opportunities for prospective subchannel operators by making it easier to obtain financing.
- Modify its rules to allow sellers to hold a reversionary interest in broadcast licenses pursuant to certain guidelines to incentivize sellers to be more willing to finance a station purchased by a new owner by retaining the ability to reacquire the station in the event of a default.
- Reinstate a relaxed attribution standard for qualifying entities to improve their ability to attract financing.

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[29] *See, e.g.,* NAB Opposition to Petition for Reconsideration in MB Docket No. 06-121, at 22-23 (filed May 6, 2008) (citing Jim Tozzi/Center for Regulatory Effectiveness Reply Comments to *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121, at 4 (filed Oct. 24, 2007) ("CRE Reply Comments") (discussing errors in Consumers Union *et al.* study) and B.D. McCullough, Peer-Review Report on The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006, by Hammond, *et al*. (deeming "fatally flawed" a study purporting to show reductions in minority and female ownership after duopoly rule changes)).

[30] *See id.* (citing NTIA, Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States 38 (2000); Kofi A. Ofori, Radio Local Market Consolidation & Minority Ownership 10-12 (2002) (showing increase in the number of minority owned and controlled radio stations since 1997); CRE Reply Comments, *supra* note 29, at 4 (finding that members of minority groups owned a *greater* number of television stations in 2006 than they did before the FCC modestly relaxed the duopoly rule in 1999)).

- Reinstate the policy that permitted the transfer of grandfathered radio station combinations to any entity so long as the buyer assigns the excess stations to a qualifying business within one year.
- Urge Congress to provide tax incentives to station owners who sell broadcast properties to qualifying owners.[31]

NAB also supports several proposals to modify rules governing radio operations advanced in a petition for rulemaking filed by Minority Media and Telecommunications Council ("MMTC"). While many of these proposed rule changes are technical in nature and are not specific to ownership, we agree that they would reduce entry barriers and promote efficiencies for existing broadcast stations owned by minorities, women and small entities.[32]

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

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Senior Vice President and Deputy General Counsel
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cc: Bill Lake, Hillary DeNigro, Brendan Holland, Benjamin Arden

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[31] *See* NAB Reply Comments in MB Docket No. 09-182 at 32-33 (filed Apr. 13, 2012); NAB Comments in MB Docket No. 09-182 at 53, n. 202 (filed Mar. 5, 2012).

[32] NAB Reply Comments in MB Docket No. 09-182 at 33. *See also* NAB Comments in MB Docket No. 09-52 (filed Oct. 23, 2009) (supporting MMTC proposals to remove the nighttime coverage rules from section 73.24(i); modify the principal community coverage rules for commercial stations; replace the minimum efficiency standard for AM stations with a "minimum radiation" standard; allow FM applicants to specify Class C, C0, C1, C2 and C3 facilities in Zones 1 and 1A; remove non-viable FM allotments; relax the limit of four contingent applications; relax the main studio rule; conduct tutorials on the radio engineering rules; and appoint a public engineer).